



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of M.P., Records
Technician 3, Motor Vehicles
(PS4527T), Motor Vehicle
Commission

Administrative Appeal

CSC Docket No. 2019-2242

ISSUED: MARCH 16, 2020 (ABR)

M.P. appeals her non-appointment from the promotional list for Records Technician 3, Motor Vehicles (PS4527T), Motor Vehicle Commission (MVC).

By way of background, the subject examination was announced with a closing date of March 21, 2017. The subject eligible list, containing 27 names, promulgated on September 14, 2017 and expires on September 13, 2020. The appellant, a non-veteran, was ranked 21. A certification, containing four names, was issued on October 9, 2018 (PS181328), with the appellant’s name listed in the third position. In disposing of the certification on January 29, 2019, the appointing authority did not make any appointments. Rather, it returned the certification noting the disposition code of B1, bypassed—unsatisfactory employment record, for the appellant; and a disposition code of I7, retain—interested in future certifications only for the other three candidates.

On appeal to the Civil Service Commission (Commission), the appellant argues that the appointing authority improperly bypassed her. She maintains that she is among the best-performing employees in the appointing authority’s Paterson agency. She avers that her manager is purposefully blocking her promotion because of “personal accusations.” She further argues that her manager has subjected her to a hostile work environment and that her bypass is part of a larger pattern of harassment by her manager. In this regard, she alleges that she has been repeatedly “singled out” and that she has been subjected to comments about her status as a single mother. Finally, she asserts that she was told during an interview for the subject position that she “ha[d] the job.”

In response, the appointing authority submits a copy of the documentation it relied upon in bypassing the appellant, including a Preliminary Notice of Disciplinary Action charging her with insubordination and conduct unbecoming a public employee based upon an August 28, 2018 incident.¹

In reply, the appellant asserts, in relevant part, that because the disciplinary action was not final at the time she was bypassed, the appointing authority did not have a basis for bypassing her.

It is noted that the appellant filed a complaint with the appointing authority's Equal Employment Opportunity Office (EEO) alleging that she was subject to harassment and denied a promotional appointment from the subject certification on the basis of her status as a single parent, in violation of the State Policy Prohibiting Discrimination in the Workplace (State Policy). The EEO found that there was insufficient evidence to substantiate her allegations. The appellant did not appeal the EEO's determination in that matter to the Civil Service Commission (Commission).

CONCLUSION

Initially, it must be noted that pursuant to *N.J.A.C.* 4A:4-4.2(c)2i, *N.J.A.C.* 4A:4-1.5(a) and *N.J.S.A.* 11A:4-13(b), when there is an incomplete list, an appointing authority has the discretion to not make an appointment; make a provisional appointment of an eligible from the incomplete list or another qualified individual; or to make a permanent appointment. *See State v. State Supervisory Employee Association*, 78 *N.J.* 54 (1978) (Determination as to need for filling higher public employment position on a provisional basis is within sole discretion of public employer). In the instant matter, the appellant was not removed nor was she bypassed on the subject certification as no appointments were made. Rather, because the other three eligibles listed on the certification indicated that they were interested in appointments from future certifications only, the certification was considered incomplete and the appointing authority was not compelled to make an appointment. It is noted that after the subject certification, the appellant's name was certified one additional time from the eligible list.² Further, the appellant filed a State Policy complaint with the EEO claiming she was not promoted from the subject certification on the basis of her status as a single parent. The EEO investigation found insufficient evidence to substantiate her allegations.

¹ Agency records indicate that the appellant was subsequently suspended for 25 working days, effective September 12, 2019 after a Final Notice of Disciplinary Action (FNDA) was issued on September 12, 2019.

² The appellant's name was certified (PS190376) to the appointing authority on March 27, 2019. When disposing of the certification on August 7, 2019, the appointing authority requested the removal of the appellant's name from the subject eligible list on the basis of an unsatisfactory employment record. It is noted that the appellant did not appeal the removal of her name from the subject eligible list to the Commission.

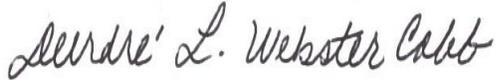
Significantly, the appellant did not file an appeal of that determination to the Commission. Therefore, since the appellant was not removed or bypassed in the instant matter and she was certified an additional time, giving her the opportunity to be considered for appointment, and her State Policy allegations were unsubstantiated, this appeal is moot.

ORDER

Therefore, it is ordered that this appeal be rendered moot.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF MARCH, 2020



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